not so where the loss of control is incomplete. I leave my axe hidden in a wood, knowing where it is and intending to return and work with it next day; it is not out of my possession. I drop my ring into the river; it is completely out of my possession.

SECTION III.—THE CONSEQUENCES OF POSSESSION.

§ 1.

If we pause for a moment to take a retrospect of the ground we have traversed, we shall find ourselves masters of the leading positions, that, while in early society, definite notions of individual property were not entertained, a sentiment gradually grew up that people who were in possession should not be disturbed. In the course of time, and in the process of growth of legal ideas, it naturally came to be further asked—"What is possession?" and next such questions arose as—Who had the possession in land, the owner or the tenant? Who had it in case there were several co-owners? Could a man be in possession of a 'right' which was not a tangible thing? and so forth. As answers were found to these, the word 'possession' grew to be a term of law, and to have a meaning not exactly conterminous with that which popular language assigns to it.

We have also discussed the notions which thus came to be involved in 'legal possession;' *the power of dealing with a thing as we please to the exclusion of others, and the intention to do so on one's own account.*

§ 2.

We may next proceed to consider *the consequences which are attached to legal possession.*

One of these has already appeared to us. The law will always respect possession and maintain it, till a better right appears. You may have no kind of title, but if you have possession, you are maintained in it till, by proper steps at law, some one else has vindicated his superior right and obtained an order to dispossess you.

We shall frequently notice that in questions of land law, the settlement of boundaries, and so forth, possession is always looked to, and maintained; the party out of possession being the one whose duty it naturally is to go to law and prove his right if he can.

The XIIth Chapter of the Criminal Procedure Code[6] is devoted to the subject of disputed possession; for the strong feelings which usually manifest themselves in disputes about land and houses, often result in violence; it is therefore desirable to provide a procedure by which steps can be summarily taken to prevent disturbance.

And the plan is this: without entering on any question of right, the Magistrate proceeds to ascertain *the fact of possession*, and makes a formal order that the possession he finds to exist, shall not be disturbed till it is so in due course of law. If this possession is not ascertainable, or if neither claimant is really in possession, he may "attach" the property until a competent court has settled the right to it[7]. The claim to a right of way or other right of that kind, is decided on the principle before alluded to, that such a right may be virtually "in possession;" and if the Magistrate finds that the way or water-course, or whatever it is, is, as a fact, "open to the use" of the public or any person, or class of persons (*i.e.*, they are in possession of the user), he maintains them in the use, by making an order that no person can stop them, till the question is lawfully decided[8].

§ 3.

Lastly, another subject has been already foreshadowed in speaking of '*adverse*' possession of the land. If your possession has been open, peaceable (not maintained by fraud, concealment or violence),

[6] Sections 145—148.

[7] In cases in which dispossession has been effected by use of criminal force and the dispossessed person obtains a conviction on a complaint of the use of force, the Magistrate can at the same time order the sufferer to be restored to his possession.

[8] As a right of this kind is not exercised *at every moment of time*, it is necessary to fix an artificial limit, and say that it will not be held to be in possession unless it has been exercised within three months from the date of the enquiry, or at the last season (before the complaint) at which the right was capable of being exercised, if such is the nature of the right. This short term is fixed only for the purposes of the summary remedy we are considering.

and with the obvious meaning that the property is yours against all comers, that is called 'adverse' possession[9]. And if this adverse possession *has gone on for a long time* undisturbed, then the law steps in and, on grounds of public convenience, declares that it shall now be permanent, and nobody shall be allowed to disturb it in future. That is practically what is meant by a person getting a *prescriptive* title, or *title by prescription*. It is possible that in theory, some one may have a better title than you; still, if in practice he has neglected to establish such title for a very long time, the law will no longer listen to him, but confirms you absolutely in your seat.

And I may pause to remark that here we may see how our brief enquiry into the origin of property, has led us to a subject of practical importance.

For, although it is now rarely, if ever, possible to find unowned lands or valuable things and seize on them and so acquire ownership by "occupation ripened by prescription," still there are a great many cases in which a distinct transfer cannot be traced, or if it can the transfer appealed to (perhaps 150 years ago) may have been informal or altogether invalid: yet there is some one in possession who claims to be owner. Then the question of that possession being adverse and of long duration, becomes very important.

§ 4.

The way in which it operated, is well illustrated by the early Roman law, which acknowledged what is called a "usucapion."

Supposing that a person had held a piece of property, and his possession originated in a just title, but still there had been some

[9] In an English law case, *Tickle* v. *Brown*, Lord Denman said,—"Enjoyment, as of right, must mean enjoyment had, not secretly or by stealth, or by tacit sufferance, or by permission asked for from time to time on each occasion, or even on many occasions for using it, but an enjoyment had openly, notoriously, without particular leave at the time, by a person claiming to use it, without danger of being treated as a trespasser, * * * * (4 Adolph. and Ellis Reports, p. 382.) The Roman law maxim neatly expresses the principle and should be remembered. The possession must be, '*nec vi, nec clam nec precario*:' not by force, nor secretly, nor precariously.

flavour of informality in the acquisition, the Roman law said that he had "usucapio" of the property, and therefore condoned, as it were, the informality and confirmed his title, after two years in the case of immovable, and one year in the case of movable, property. It is this "usucapion" which has descended to the later Roman, and to our modern, law, under the name of "Prescription."

§ 5.

But, strange to say, the descent or admission of this ancient and very necessary principle, to modern law, was by no means an easy one. Owing to influences which we cannot here trace, the law was slow to recognise prescription *as giving a title*. And many lawyers insisted on a distinction between a period which *gave a title* by prescription, and a period of limitation which merely barred your right to sue in court. The doctrine was strongly maintained by some, that a right could never perish. Supposing then that you were out of possession for twenty years, your *right of property* could not perish by that lapse of time, although the law, by its rules of limitation, might prevent you from asserting your right against the actual possessor[10].

§ 6.

We need not, however, be further troubled with this refined distinction. Our Indian law has cut the Gordian knot and recognises the lapse of time as *giving a title*, and it declares the *extinction of the right* not enforced within the prescribed period[1]. What the period is, depends on what kind of property you are seeking the title of. A forest right, for example, or a right of way, of which possession has been properly and uninterruptedly maintained, becomes a prescriptive right in twenty years. If you had

[10] In Roman law the recognition of a *title* by prescription was made in the time of Justinian (Institutes Lib. II, Tit 6). In England no law of limitation existed till the days of James I, and I believe it is still doubtful what the effect of the Statute is—whether to extinguish the right or only bar the remedy.

[1] See Limitation Act XV of 1877, section 28.